IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17056 of 2003
with
SPECIAL CIVIL APPLICATION No. 9680 of 2004
with
CIVIL APPLICATION No. 2991 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 *Whether Reporters of Local Papers may be allowed to see the judgment ?*

2 *To be referred to the Reporter or not ?*

3 *Whether their Lordships wish to see the fair copy of the judgment ?*

4 *Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?*

5 *Whether it is to be circulated to the civil judge ?*

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EXECUTIVE ENGINEER - Petitioner(s)
Versus
SHANKARBHAI JIVABHAI PATEL - Respondent(s)

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= Appearance :
MR SUDHANSHU S PATEL for Petitioner-Panchayat
MR PH PATHAK for Respondent-workman

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 10/03/2006

COMMON ORAL JUDGMENT :

1. In both these petitions, Award passed by the Labour Court, Bharuch, in Reference (LCB) No.602 of 1990 (Old (LCB) No.955 of 1989) dated 31.1.2003 is challenged. The Labour Court, Bharuch, has set aside the termination order and granted reinstatement with continuity of service with 35% backwages for interim period. The employer has raised grievance against reinstatement and 35% backwages whereas the workman has raised grievance for denial of 65% backwages, therefore, both the matters are heard together. I have heard learned advocate Shri Sudhanshu Patel on behalf of employer and Shri P.H.Pathak, learned advocate appearing for the workman.

2. The services of the workman, according to him, were terminated on 1.2.1987, dispute against termination was referred for adjudication on 28.9.1989 to the Labour Court. According to the workman, he remained in service from 11.8.1983 to 9.9.1984 as a daily wager and from 10.9.1984 to 31.1.1987 as a

workcharge employee in the scale of Rs.260-400. According to him, his services were terminated without giving any opportunity, being victimization and without giving any reason or justification by the employer. The statement of claim which was filed by the workman was replied by the employer vide Ex.14. In reply, contention was raised by the employer that the Labour Court has no jurisdiction as Civil Service Servant Tribunal Act is applicable to the workman concerned. Further averment made in the reply is that the workman was appointed by the employer without following legal and due procedure under the Panchayat Service Rules. The workman was appointed for 29 days which was on contract basis and such type of appointments were given from 10.9.1984 to 31.1.1987. On the next date, i.e. On 1.2.1987, the contract was not renewed, and therefore, the services of the workman automatically came to an end by afflux of time. So according to the employer, there is no termination from their side but services came to an end automatically by afflux of time. Before the Labour

Court, the workman produced certain documents vide Ex.16 wherein appointment orders were produced. On behalf of employer, vide Ex.45, certain documents were produced from Ex.53 to 61, in which, copy of Muster Roll was also produced. The workman was examined vide Ex.15 and he deposed before the Labour Court that he was employed fro 11.8.1983 to 9.9.1984 as a daily wager workman on daily wage of Rs.15/- per day and then from 10.9.1984 to 31.1.1987 by 29 days' order. Salary was received by him as per Government Rules, during his service no memo was given by the employer, post of wireman was found to be vacant and after completion of period, his service was terminated. According to the workman, he was terminated because he raised demand for making him permanent. After termination, he wrote a letter to the employer to reinstatement him but it was not accepted and therefore, Reference was made. In cross-examination, workman deposed before the Labour Court that he had completed 240 days' continuous service. Then vide Ex.48, witness on behalf of employer has been examined.

Thereafter, matter was heard by the Labour court. Thereafter, the Labour Court raised issue as to whether the workman is entitled for reinstatement with continuity of service with full backwages or not. The Labour Court has considered the defence of the employer that such type of appointments were based on contract and the appointment was for the period from 10.9.1984 to 31.1.1987. In view of these facts, the Labour Court raised issue whether the service which was rendered by the workman with the employer is based on contract or not. The Labour Court has referred and considered the periodical appointments given by the employer to the workman. It is not a dispute raised by the employer that the workman did not remain in service for the entire period. On the basis of this evidence and submissions made by employer, the Labour Court has rightly raised the question whether there is any justification with the employer to give such type of orders of appointments on contract basis. The Labour Court has at page 11, rightly raised the question that

such type of periodical appointments on contract basis are without any justification from the employer who is a public body and the same has created some doubt namely of denial of legal rights of the workman or to avoid the statutory provisions for necessary compliance. The Labour Court has considered that such type of 29 days' order can be given by the employer how long or for how much period. There is no end to such type of appointments given to the workman. Therefore, the Labour Court considered Section 2(oo)(bb) of the Industrial Disputes Act, 1947 (hereinafter referred to as “the Act”), which gives power or authority to the employer to appoint an employee on contract basis by giving periodical appointments. The Labour Court interpreted the word `contract' and came to conclusion that such kind of appointment while giving artificial breaks for one or two days amounts to unfair labour practice adopted by a public body. There is no justification given by the employer that why each month such type of order is required to be issued in favour of the workman, is

there any demand raised by the Department or from any section which requires employment of the workman concerned periodically. The Labour court has rightly come to the conclusion that this break is artificial and such type of tactics have been adopted by the employer to deny legal benefits which are available to the workman under the law. The power given to the employer to appoint any employee on periodical basis or contract basis must have to be justified by the employer before the Court that such type of specific appointment was required for specific work or duration and that has not been justified by the employer before the Labour Court. The Labour Court has considered certain decisions which were cited by both the sides and ultimately, the Labour court has come to the conclusion that such type of appointments given to the workman are arbitrary, amount to unfair labour practice adopted by the public body and just to deny the legal benefits to the workman or to avoid legal complications while terminating the service, this mode is adopted. Therefore

ultimately, the Labour Court has come to the conclusion that the workman had completed continuous service in both parts 240 days and at the time of terminating the service, Section 25F of the Act has not been complied with and therefore, termination order is set aside and the Labour Court has granted reinstatement in service. Then the Labour Court has considered the question of backwages. The Labour court considered the deposition of workman and the fact that in his cross examination he admitted that he was receiving Rs.15/- per day, Reference was of 1989, more than 13 years old and workman was having technical knowledge of wireman, and therefore, he may not have remained without work for long period and further the fact that the petitioner-Panchayat is a public body, being a part of Government, so unnecessary financial burden may not be imposed upon the establishment was also considered and thereafter, considering these facts, the Labour Court has granted only 35% backwages for interim period.

3.Learned advocate Shri Sudhanshu Patel appearing for the Panchayat, has relied upon certain decisions in support of his submission that it was a periodical appointment covered by definition under section 2(oo)(bb) of the Act and if the case falls under this definition, section 25F will not be applicable, because it does not amount to retrenchment and therefore, the Labour Court has committed gross error.

4.Shri P.H.Pathak, learned advocate appearing for the workman submitted that the Labour Court has rightly examined the matter and came to conclusion that it is a case of termination, violated by Section 25F of the Act. He submitted that the Labour Court has committed error in not granting full backwages for interim period as employer has not proved gainful employment of the workman. It is the burden on the employer to prove gainful employment which is not proved and therefore, workman is entitled for full backwages for interim period.

5.I have considered the rival submissions made by learned counsel for the parties. The workman was

appointed as a daily wager with effect from 11.8.1983 and he remained in service upto 31.1.1987. Nature of work has not changed in between. It is not the case of employer that nature of work changed. But from 10.9.1984, periodical orders were given with artificial breaks of one or two days upto 31.1.19887. By amendment in the Act, section 2(oo)(bb) came into force on 18.8.1984. In this case, appointment was prior to 18.8.1984. Therefor, Section 2(oo)(bb) of the Act is not applicable to the facts of this case. Section 2(oo)(bb) is not having retrospective effect as decided by Gujarat High Court in the case of Bharat Heavy Electricals Limited reported in 1989 (2) GLH Page 1. Therefore, the question is that workman remained in continuous service from 11.8.1983 upto 31.1.1987. In between, merely by change of method to employ the workman will not make any difference in the original status of the workman which was enjoyed by him from the date of initial appointment on 11.8.1983.

6.The petitioner-employer is the Executive Engineer,

District Panchayat, Bharuch. The petitioner-Panchayat has not established few facts before the Labour Court, one that why service condition has been changed from daily wager to periodical appointment. For that, no requirement or justification has been pointed out and justified by the petitioner-Panchayat. Second thing is that what was the requirement or necessity to issue such type of periodical appointment orders in favour of workman for the period from 10.9.1984 to 31.1.1987. The third thing is why the contract is not renewed after period 31.1.1987, whether work was available or not or particular work is over or project is over, no justification from the petitioner-Panchayat for not to extend the service of workman beyond 31.1.1987 is forthcoming. So the Labour Court, in such circumstances, rightly considered the object of incorporation of Section 2(oo)(bb) in the Act and word `contract' has been interpreted in a proper manner. So the employer may not misuse such provision in a normal case by giving periodical appointment. The object behind amendment

of Section 2(oo)(bb) is that in some cases, due to workload, some project or some particular target in factory or establishment is required to be completed within some specific time, therefore in such circumstances, it can be justified for periodical appointment because of such kind of work available with the employer, but in normal case like present one, the petitioner, who is a Panchayat, appointed the workman in a periodical manner from daily wager to periodical appointment, and this has not been justified by proper evidence before the Labour Court that there was really need of a person for a particular period and not for ever and therefore, his services were not continued. One witness was examined on behalf of the petitioner-Panchayat. There was no evidence produced before the Labour court by the petitioner-Panchayat to satisfy the requirement of Section 2(oo)(bb) of the Act. Suppose in case if really the petitioner-Panchayat was having necessity to employee the workman for one month and in case his services were required in second month, appointment

order can be given for second month, but it is not understandable the practice or tactics which has been adopted by the petitioner-Panchayat that for entire period from 10.9.1984 to 31.1.1987, about more than three years, a workman remains in service by periodical appointment orders with breaks of one or two days. So ultimately the idea of a public body is to exploit the workman by taking work from him in such a manner because the workman has no source to have bargaining with the Panchayat because he is unemployed. Therefore, he is compelled to accept such type of orders but it is not a bonafide order issued by the Panchayat and therefore the Labour Court has rightly appreciated the evidence on record and came to the conclusion that it is not a bonafide order and it amounts to exploitation of a workman by a public body by issuing an order of appointment in arbitrary manner and ultimately just to exclude termination from the scope of Section 2(oo) of the Act. In the light of this, the Labour Court has set aside the termination order considering his continuous

service with effect from 11.8.1983 to 31.1.1987, and holding that Section 25F of the Act has not been complied with by the petitioner-Panchayat and it is not a case of Panchayat that they have complied with the provision of Section 25F of the Act. Therefore, according to my opinion, the Labour Court has rightly set aside the termination order.

7. Following decisions have been relied upon by learned advocate Shri Sudhanshu Patel for the Petitioner-Panchayat:

(1) Kishore Chandra Samal v. The Divisional Manager, Orissa State Cashew Development Corporation Ltd., Dhenkanal – 2005(9) SCALE 379

(2) Punjab State Electricity Board v. Darbara Singh - 2005(9) SCALE 385

(3) General Manager, Haryana Roadways v. Rudhan Singh – (2005)5 SCC 591

(4) Navodaya Vidyalaya Samiti v. T.C.S. Naidu – (2001)9 SCC 403

(5) Balubhai G.Makwana v. State of Gujarat & Ors. - 2002(4) GLR 2940.

8. Relying upon the decision of Apex Court in General

Manager, Haryana Roadways (supra) it is submitted that in case termination is found to be bad or illegal, workman is not entitled automatically for full backwages or any wages, but before granting wages, certain relevant factors are to be taken into account by the Labour Court about the length of service, age, family circumstances and condition of establishment. He submitted that as per the decisions of Apex Court, periodical appointments are outside the scope of Section 2(oo) of the Act, means, it is not retrenchment. However, the facts in each case are different in comparison to the facts of the present case. Recently, the Division Bench of Madras High Court in *The Manager (P&A), Oil and Natural Gas Corporation Ltd., Chennai v. G.Radhakrishnan* (2005 Lab.I.C. 2570) has considered the scope of Section 2(oo)(bb) and also considered that how unscrupulous employer abuse such provision while employing the workmen, and that in such circumstances, the court should see the real position so as to rule out injustice to the workmen. The Division Bench of Madras High Court in

above decision considered certain decisions of Apex Court and various High Courts and thereafter held in paragraph-22 that:

> *"22. The above referred to decisions on interpretation of Section 2(oo)(bb) explain the legal position to the effect that a claim of an employer on a term based employee providing for automatic termination whether within the terms fixed or on expiry of the said term, cannot be taken for granted to sustain the order of termination. On a plain reading of Section 2(oo)(bb), it is quite clear that such term based employment would fall outside the scope of `retrenchment' so long as the requirement of such fixed period of employment was bona fide required by the employer. It was therefore, repeatedly pointed out that such excepted categories required a rigorous test rather than accepting the plea of employer on its face value or*

otherwise it would cause serious prejudice to an employee, who can be taken for a ride by unscrupulous employers by contending that the term of employment was for specific period though as a matter of fact such period of employment lasted quite for a long spell. In other words even though the requirement of employment was perennial by adopting the methodology of employing a person for a specific period as many a times, an unscrupulous employer can always resort to abusing the provision contained in Section 2(oo)(bb) to thwart the other statutory protection available to an employee under Section 2(oo), namely, in the case of a `retrenchment' vis-a-vis the consequential benefits contained under Section 25-F of the Industrial Disputes Act. Therefore, when such extraordinary circumstances are brought out in the matter of employment and

termination is resorted to by taking umbrage under Section 2(oo)(bb) of the Industrial Disputes Act, in the interest of justice, we are of the view that a close scrutiny of the real position will have to be necessarily made to rule out the possibility of any injustice being caused to an employee. It cannot be lost sight of that Section 2(oo)(bb) is specifically meant to cover only such employment which would be needed for an employer for a specific period alone and beyond which the requirement will not be there and even on such occasions, the employer should not be put into an unnecessary predicament of facing the other consequences that would normally occur while resorting to retrenchment. The benefit of the said exception will have to be strictly restricted to such specific situations alone and the same cannot be allowed to be misused or abused by the employers even in regard to cases

where the nature and requirement of employment is perennial."

See :

(1) S.M.Nilajkar v. Telecom District Manager, Karnataka, 2003 Lab IC 2273 : AIR 2003 SC 3553 : 2003 AIR SCW 2196 : 2003 AIR Kant HCR 1193.

(2) Dpty. Director of Health Services, Nashik v. Latabai Rajdhar Paturkar, 1996 Lab IC 428 : (1996)3 Lab LN 675 (Bom)

(3) Madhya Pradesh Bank Karmachari Sangh (MP) v. Syndicate Bank 1996 Lab IC 1161 (MP)

(4) Alexander Yesudas Maikel v. Perfect Oil Seals and IRP, 1995(1) Lab LN 1165 : 1995 Lab LR 777 (Bom)

(5) M.Venugopal v. LIC of India, AP AIR 1994 SC 1343 : 1994 AIR SCW 778 : 1994(1) Lab LJ 597

(6) Chairman-cum-Managing Director, Orissa Road Transport Co. Ltd. v. Ramesh Chandra Gouda, 1994 Lab IC (NOC) 387 : 1994(2) Lab LJ 1127 (Orissa)

(7) Chakradhar Tripathy v. State of Orissa 1992 Lab IC 1813 (Orissa)

(8) Shailendra Nath Shukla v. Vice-Chancellar,

Allahabad University, 1987 Lab IC 1607.

9. Termination of service of casual workmen on daily wages will not fall within the exception contained in sub-clause (bb) of S.2(oo) of the Act, because the “contract of employment” is referable to the contract other than engagement of casual workers on daily wages. `Non-renewal of the contract of employment' presupposes an existing contract of employment which is not renewed. Even in respect of a daily-wager a contract of employment may exist, such contract being from day to day. The position however, would be different when such a contract is in reality camouflage for a more sustaining nature of arrangement, but the mode of daily-wager is adopted so as to avoid the rigors of the Act. This clause does not contemplate to cover a contract such as of a daily-wager and is rather intended to cover more general class of contracts where a regular contract of employment is entered into and the termination of the service is because of non-renewal of the contract. This interpretation of sub-clause (bb) is in consonance with the

substantive provision of clause (oo) of S.2 defining `retrenchment' as termination of service of a workman for any reason whatsoever (See: Chairman-cum-Managing Director Orissa Road Transport Co. Ltd. v. Ramesh Chandra Gouda, [1994] II LLJ 1127 (1128-29) (Ori.) (D.B.), per Rath, J.). Likewise termination of service of a `badli' workman in terms of the contract of employment will not be retrenchment in view of this provision. (Shankariah v. K.S.R.T.C., [1986] I LLJ 195 (196) (Kant.), per Rama Jois, J.)

10. In S. Gobindaraju v. K.S.R.T.C. ([1986] II LLJ 351 (SC), per K.N.Singh, J. the case was decided on another short point viz., the workman was entitled to succeed as the termination order was violative of the principles of natural justice, the Supreme Court did not consider it necessary to decide the point that if the termination of service of a workman by non-renewal of the term of contract of employment or under a stipulation contained in the contract of employment in that behalf will not amount to `retrenchment' in view of the provisions

of sub-clause 2(bb), it would enable unscrupulous employers always to provide a fixed term or stipulation in the contract of service for terminating the employment of employees to escape the rigor of S.25F or S.25N of the Act. And it would further confer arbitrary powers on the employer which would be destructive of the protection guaranteed by the Act to the employees. But various High Courts, using interpretative techniques have mellowed down the rigor of the bare reading of the statute. In Shailendra Nath Shukla v. Vice Chancellor, Allahabad University ([1987] Lab.I.C. 1607 (All.) (D.B.), per Sahai, J.; Chairman-cum-Managing Director Orissa Road Transport Co. Ltd. v. Ramesh Chandra Gouda, [1994] II LLJ 1127 (1128-29) (Ori.) (D.B.), per Rath, J.; Jaybharat Printers & Publishers Pvt. Ltd. v. Labour Court Kozhikode, [1994] II LLJ 373 (Ker.), per Shamsuddin, J.; Bhikku Ram v. Presiding Officer Industrial Tribunal-cum-Labour Court, Rohtak, [1995] Lab.I.C. 2448 (2458-60) (Punj. & Har.) (D.B.), per Singhvi, J. In the facts and

circumstances of the case, the termination was held not to be bona fide.; Nathu Ram Saini v. Hindustan Copper Ltd., [1995] I LLJ 421 (424) (Raj.), per Singhvi J.; Ramkishan v. Samrat Ashok Technical Institute, Vidisha, [1995] I LLJ 944 (999) (M.P.), per Dwivedi, J.; Alexander Yesudas Maikel v. Perfect Oil Seals and I.R.P., [1996] I LLJ 533 (535-36) (Bom.), per Srikrishna, J.; Vadodara Municipal Corporation v. Gajendra R.Dhumal, [1996] I LLJ 206 (208-9) (Guj.), per Balia, J.), a Division Bench of the Allahabad High Court observed that sub-clause (bb) is in the nature of an exception to S.2(oo) and has to be construed strictly and in favour of the workmen, as the entire object of the Act is to secure a just and fair deal to them, while adjudicating the termination of service of a workman for non-renewal of the contract of employment on expiry of the time stipulated in the contract of employment. The nature of employment must be judged by the nature of duties performed by the workman and not on the basis of the letter issued by the employer. S.2(oo)

(bb) cannot be extended to cases where the job continues and the employee's work is also satisfactory but periodical renewals are made to avoid regular status to the workmen, as it would be `unfair labour practice'. If contractual employment is resorted to as a mechanism to frustrate the claim of the employee to become regular or permanent against a job which continues or the nature of duties is such that the colour of contractual agreement is given to take it out from S.2(oo), then such agreement cannot be regarded as fair or bona fide. In this case, since the workmen had been working for nearly five years continuously and their jobs were not seasonal, casual or of a daily worker and their duties were like that of a regular employee, the termination of their services on expiry of the stipulated period in the agreement or non-renewal of contract of employment did not come under sub-clause 2(oo)(bb) and amounted to `retrenchment'. A similar view has been taken by a single Judge of a Bombay High Court in Dilip Hanumantrao Shirke v. Zilla Parishad, Yavatmal

([1990] Lab.I.C. 100 (103) (Bom.), per Patel, J., holding that the mere fact that the contract of employment provided termination of by efflux of time, would not by itself be sufficient to take such terminations out of the scope of the definition of `retrenchment'. The adjudicator has to address himself to the question as to whether the period of employment was stipulated in the contract of employment as a device to escape the applicability of the definition of `retrenchment'. Likewise, a single Judge of the Punjab & Haryana High Court in Balbir Singh v. Kurukshetra Central Co-op. Bank Ltd. ([1990] LLJ 443 (445) (Punj. & Har.), per Amarjeet Chaudhary, J. See also: Chairman-cum-managing Director Orissa Road Transport Co. Ltd. v. Ramesh Chandra Gauda, [1994] II LLJ 1127 (1128-29) (Ori.) (D.B.), per Rath, J.) has pointed out that this clause being in the nature of an exception cannot be given meaning which will nullify or curtail the ambit of the principle clause, because it is not intended to be an outlet to unscrupulous employers to shunt out

workmen in the garb of non-renewal of the contract even if the work subsists. The clause, therefore, has to be construed strictly in favour of the workman as far as possible. This provision cannot be resorted to, to frustrate the claim of the employee against uncalled for retrenchment or for denying other benefits. In other words, it is not to be so interpreted as to enable an employer to resort to the policy of `hire and fire' and give unguided power to him to renew or not to renew the contract irrespective of the circumstances in which it was entered into or the nature and extent of work for which he was employed. It has to be interpreted to limit it to the case where the work itself has been accomplished and the agreement of hiring for a specific period was genuine. If the work continues, the non-renewal of the contract has to be dubbed as mala fide.

11.In Madhya Pradesh Bank Karamchari Sangh v. Syndicate Bank [(1996) Lab. I.C. 1161 (1165-66) (M.P.), Per Doabia, J.] on a review of the law laid down by the Supreme Court and by various High

Courts, a single Judge of the Madhya Pradesh High Court has stated the following principles of interpretation and application of the provisions of this clause --

“(i) that the provisions of Section 2(oo)(bb) are to be construed benevolently in favour of the workmen;

(ii) that if the workman is allowed to continue in service by making periodic appointments from time to time, then it can be said that the case would not fall under section 2(oo)(bb);

(iii) that the provisions of S.2(oo)(bb) are not to be interpreted in the manner which may stifle the main provision;

(iv) that if the workman continues in service, the non-renewal of the contract can be deemed as mala fide and it may amount to be a fraud on statute;

(v) that there would be wrong presumption of non applicability of section 2(oo)(bb) where the work is of continuous nature and there is nothing on record that the work for which a workman has been appointed had come to an end”.

In Alexander *Yesudas Maikel v. Perfect Oil Seals and IRP & Ors.* [1996(1) LLJ 533], the Bombay High Court held in paragraph-5 that:

> *".....In any event, one cannot lose sight of the fact that clause (bb) has itself been restrictively interpreted and the judicial consensus appears to be that, if the post cannot be said to operate as a charter for unscrupulous employers to jettison their workmen. (See in this connection Dilip Hanumantrao Shirke & Ors. v. Zilla Parishad, Yavatmal & Ors. (1990-I-LLJ-445) (Bom), State Bank of India v. N.Sundaramoney (1976-I-LLJ-478) (SC), S.S.Sambre v. Chief Reg. Manager Central Bank of India, Nagpur & Anr. (1992-I-LLJ-684 Bom), and K.Rajendran v. Dir.(Per.) Project & Equipment Corporation of India Ltd. New Delhi & Anr. 1992 I CLR 462."*

12. In view of the above observations of High Courts, if I test the facts of the present case, it is more clear that workman remained in service for about

more than four years continuously which was a perennial work. No specific requirement is pleaded and proved by the employer. Therefore, according to my opinion, the Labour Court has rightly come to conclusion and decisions which have been relied by Mr.Patel are not applicable to the facts of the present case because here, initial appointment was on daily wage without any break and then all of a sudden, nature of appointment has been changed adverse to the workman without any justification and reasons, where the workman was working on the same capacity, and same nature of work was being carried out by him. Further, it is not the case of employer that nature of work has been changed. So in these facts of the case, the action which has been adopted by the Panchayat, a public body, has rightly been set aside by the Labour Court and therefore, according to my opinion, the Labour Court has not committed any error in granting reinstatement to the workman.

13.In respect to the relief granted to the workman about backwages, according to my opinion, the

Labour Court has rightly granted 35% backwages while keeping in mind some gainful employment admitted by the workman, 13 years' delay in deciding the Reference, workman having technical knowledge of wireman, and Panchayat being a public body. Therefore, the Labour Court has not committed any error while granting 35% backwages for interim period in favour of workman and rightly denied 65% backwages for interim period. For that also, the Labour court has not committed any error which requires interference by this Court.

14. During the pendency of these petitions, on 18.10.2004, following order was passed by this Court:

> “Heard the learned advocates. Interim relief granted on 09.12.2003 is modified in view of the statement made by Mr.P.H.Pathak, the learned advocate for the respondent herein to the effect that a junior to the respondent workman, Mr.Mahendrabhai Mohanlal Dodia is continued in

service. The judgment and order dated 31.01.2003 passed by the Honourable Labour Court vide Reference (LCB) No.602 of 1990 [Old LCB No.955 of 1989] is stayed qua back wages only. Looking to the age of the matter the petitioner is directed to reinstate the respondent workman on or before 01.11.2004. The matter be listed for final hearing in regular course. It will be open for Mr.P.H.Pathak to communicate this order directly."

15.In pursuance of this order of 18.10.2004, the workman was reinstated in service in November 2004. Learned advocate Mr.Pathak has submitted that petitioner will reach the age of 60 years on 31.3.2006. Therefore, this being a subsequent position, that workman was reinstated in service and now he will reach the age of superannuation on 31.3.2006, further question of implementation of order of reinstatement looking to the facts, does not arise.

16.In view of the above, according to my opinion, the Labour Court has rightly decided the matter. This Court cannot act as an appellate court, the findings given by the Labour Court are not baseless or perverse, the Labour Court has given cogent reasons in support of its conclusions. Even in cases where two views are possible, this Court has no jurisdiction to interfere with the matter. Therefore, according to my opinion, the Labour Court has not committed any error while passing Award which requires interference by this Court under Article 227 of the Constitution. Hence, both the petitions are dismissed. Rule discharged.

17.In view of the fact that petitions have been disposed of, Civil Application does not survive and the same is disposed of.

(H.K.Rathod, J.)

(sunil)